SOCIAL SECURITY USA ADMINISTRATION

DISABILITY NOTES

SSA--Office of Disability Pub. No. 64-040 Issue I – 2000 (No.25)

FROM THE ASSOCIATE COMMISSIONER:

We in the disability program are working to deliver responsive world-class service to our customers and the public. We are striving to deliver the highest level of service by making fair, consistent and timely decisions at all adjudicative levels. We are moving forward on many fronts in our efforts to make the disability program work for the individuals it is designed to serve and for the public.

In October 1999, SSA began prototyping the new disability process (see: Summer 1999 issue, "DISABILITY PROTOTYPES"). All components from the field offices through the state Disability Determination Services (DDSs) and administrative law judge hearing offices, and all the supporting program policy components, are working together on this major effort. We are in the early stages of this process, but in our next issue, I hope to be able to give you an update on our progress.

Applicants for disability benefits need to be confident that the decisions on their claims are correct. We have heard the concerns of disability applicants and advocates about possible inconsistencies between decisions at different steps of the disability process, and have been working hard at what we call "process unification" since 1996. Process unification isn't just one thing, but a wide variety of activities, and it is a continuous process. For example, when we issue new rules and instructions we are now providing them to all the decisionmakers and quality reviewers at each step of the application and appeal process using the exact, same words, something we did not always do in the past. We have also been providing fully integrated training, often mixing our hearings and appeals staffs and DDS staffs in the same classes so they can interact with each other. We are committed to ensuring that all involved have the most up-to-date information.

I hope you had a chance to review our special edition on *The Ticket to Work and Work Incentives Improvement Act,* which provides more opportunities for individuals with disabilities who want to work (see: Special Edition 2000 of *Disability Notes*). We are both excited and optimistic about the new law and the potential for empowerment of individuals with disabilities.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) made a number of significant changes to the Supplemental Security Income (SSI) program for children with disabilities. Chiefly, the PRWORA established a new, stricter definition of disability for children and required SSA to redetermine the eligibility of certain children already receiving SSI using the new standard. This meant that we had to re-look at the eligibility of about 288,000 children out of almost 1 million children who were receiving SSI at the time; the other 700,000 weren't affected. Most of the 288,000 children stayed eligible because they met the new legal standard. But about 100,000 did lose their eligibility, although some are still appealing our decision and may eventually qualify. We don't want any child or family to lose eligibility incorrectly, so we're listening to parents, advocates for children, and others to make sure that we are making the best decisions we can.

As we work in these and other areas of the disability program we recognize that we need to come together -- with other offices, agencies, advocates, legislators and the public. We are working and will continue to work cooperatively and collaboratively with all interested individuals to effectively administer the disability programs for people who need them.

Ken Nibali

IMPROVE FEDERAL GOVERNMENT SERVICES TO YOUNG CHILDREN WITH DISABILITIES AND THEIR FAMILIES

Associate Commissioner, Kenneth Nibali, and staff from the Office of Disability have been working since 1997 with other federal agencies and other interested parties through the Federal Interagency Coordinating Council (FICC) to improve services to young children with disabilities.

The FICC is an interagency council designed to improve federal government services to young children with disabilities and their families. The FICC is composed of government agency representatives and family representatives. The families are advocates in their communities and come from diverse backgrounds. The FICC works to ensure that all children from birth to age eight with or at risk for developing disabilities and their families benefit from an integrated, seamless system of services and supports that is family centered, community based, and culturally competent.

The FICC is working toward this goal by providing a forum for regular discussion of policy and programs. Through these meetings, program implementation and changes are discussed to make sure that they are working in concert with one another. "The goal is for children with disabilities to have their physical, mental, health, development and learning needs met in order to reach their full potential. The Office of Disability recognizes the value of working within the FICC and tackling the concerns of the families and children these programs are designed to serve," Associate Commissioner Kenneth Nibali stated.

THE CONSULTATIVE EXAMINATION

Jim filed an application for disability benefits with the local Social Security office about 30 days ago, and today he received a letter from the DDS asking him to go to a consultative examination (CE). He is concerned, and calls his caseworker at the DDS to get more information. Jim shouldn't be worried. Here is some important background information to help him and everyone else who is scheduled for a CE.

When a person files a claim for disability benefits, or we do a continuing disability review to see if he or she is still entitled to benefits, we need medical evidence to show whether the person is disabled or still disabled. We generally try to get medical information from the sources (like doctors and hospitals) the individual has gone to for treatment or examinations. But that isn't always enough for us to make a decision under Social Security law and rules.

There are several reasons we may buy a CE, or even more than one CE. One of the main reasons is to supplement existing medical evidence from treatment sources when there just isn't enough information for us to make a decision. Another major reason is to resolve a conflict or ambiguity in the person's records. Less often, CEs are required when a person doesn't have a treating source or when existing records are not available. In short, a CE is an effort to get additional information.

A CE can be a physical or mental examination or tests. We may request a CE from a treating physician or psychologist, another source listed in your records, or from an independent source, including a pediatrician when appropriate. We pay for the CE.

One thing that you should remember is that you will not necessarily have a lengthy or exhaustive examination for your alleged disability because we may already have enough other information from your records. We will purchase only the specific examinations and tests we need to make a determination in your claim. For example, we will not authorize a full medical examination when the only evidence we need is a special test, such as an X-ray, blood studies, or an electrocardiogram (EKG). You should also know that we allow the physician or psychologist to use support staff to help perform the CE, but the physician or psychologist is still responsible for reviewing what they did and for the report that he or she sends to us.

You are allowed to object to being examined by a particular physician or psychologist we choose to do the CE if you have a good reason. If there is a good reason for your objection, we will schedule the examination with another physician

or psychologist. Good reasons include that the consultative examiner had once represented an interest adverse to you, or the consultative examiner had examined you in connection with a previous Social Security disability determination or decision that was unfavorable to you. If your objection is that you think a physician or psychologist "lacks objectivity" in general, but not in relation to you personally, we will review your allegations, but will also change your CE to another provider to avoid a delay in your claim while we conduct the review. However, if we had previously conducted such a review and found that the reports of the consultative physician or psychologist in question conformed to our guidelines, we will not change your examination. We will also consider your objections to a specific CE if there is a language barrier, physical inaccessibility of the examination site or you have travel restrictions.

We expect that a CE will be a professional and courteous experience for you. If you have a complaint about your treatment or the CE provider, you should contact the DDS and let them know your concerns. The letter from the DDS asking you to go to a CE will tell you how to do this. Finally, you need to keep your CE appointment and be there on time. Doing this will help the timely processing of your claim.

SUPREME COURT RULES ON THE RELATIONSHIP BETWEEN THE SOCIAL SECURITY ACT AND THE AMERICANS WITH DISABILITIES ACT (ADA)

In keeping with our policy of making available to the public precedential decisions that affect our programs, we published Social Security Ruling 00-1c: *Disability Insurance Benefits--Claims Filed Under Both the Social Security Act and the Americans With Disabilities Act*, on January 7, 2000.

This ruling reprints the text of the Supreme Court's decision in *Carolyn C. Cleveland v. Policy Management Systems Corporation, et al.*, decided May 24, 1999, which considered a person's right to seek relief under the ADA if the person has applied for or received Social Security Disability Insurance (SSDI).

A number of federal courts had held that by applying for or receiving disability benefits, claimants conceded that their impairments were too severe to permit them to work. The courts held, therefore, that claimants could not at the same time file claims under the ADA in which they are required to prove that they are capable of working with or without "reasonable accommodation."

The Supreme Court's unanimous decision disagreed and held that there are many situations in which claimants can apply for or receive SSDI and still exercise their rights under the ADA. The Court further held that, while there may be an appearance of conflict between the two statutes, and that a Social Security disability claim may turn out to genuinely conflict with an ADA claim, they do not conflict to the extent that courts should automatically presume that a claimant cannot prove that he or she is capable of "performing the essential functions" of a job with "reasonable accommodation." The Court believed that there are too many situations in which a Social Security claim and an ADA claim can comfortably exist side-by-side.

You can find SSR 00-1c at www.ssa.gov/OP_Home/rulings/di/01/SSR00-01-di-01.html

CHANGE IN THE PROCESSING OF CURRENTLY FILED APPLICATIONS WHILE A PRIOR CLAIM IS PENDING APPEALS COUNCIL REVIEW

For some time, Commissioner Kenneth Apfel has been concerned about the hardship some claimants face when their claims have been in the appeals process for a long time, especially when their medical conditions may have gotten worse in the meantime.

Claimants who appeal decisions with which they don't agree have always had the right to file new applications even while they were waiting for their appeals to be decided. But when certain cases were waiting for Appeals Council (AC) review, SSA would not make a decision on any new applications until the AC finished its action on the earlier application. The AC reviews

appeals from Administrative Law Judge (ALJ) decisions and is the last level of review within the Agency.

In some cases, this meant that people with new applications had to wait as long as a year or more before we would look at their new applications. Now, under new procedures put into effect on December 30, 1999, SSA will process all new applications of individuals who have appeals of prior claims awaiting AC review.

Beginning on January 3, 2000, when an individual files a new disability application, the new application will go without delay to the DDS for an initial determination about disability. If the DDS decides that the person is disabled, it will send the new case to the appropriate office for payment.

Under the new procedure, the DDS cannot find that a person's disability began before the date of the ALJ's decision on the prior application no matter when the person says he or she first became disabled. This is because the AC must still consider the period before the ALJ's decision was issued. But the information from the DDS' favorable decision will be sent to the AC so they can see if it contains new and material evidence relating to the period they are considering.

EVALUATION OF DISABILITY FOR AGED INDIVIDUALS

Under the new criteria in Public Law 105-33, the Balanced Budget Act of 1997, "qualified" non-citizens lawfully residing in the United States on August 22, 1996, who are disabled or blind, may be eligible for SSI benefits. Individuals can qualify for benefits based on disability at any age, even on or after attaining age 65. (All citizens and many noncitizens who are age 65 or older qualify for SSI without having to show disability.) To address the unique issues of evaluating disability in individuals age 65 and over, we published Social Security Ruling 99-3p, *Title XVI: Evaluation of Disability and Blindness in Initial Claims for Individuals Age 65 or Older*, on June 22, 1999.
Before the Balanced Budget Act of 1997, we rarely made disability determinations for people age 65 and older because most people that age don't have to show that they are disabled to qualify for benefits. However, we did have to make some disability determinations for special reasons: for a small number of aged non-citizens, to determine if the work incentive provisions under § 1619(b) of the Social Security Act applied; to determine appropriate deeming of income and resources; and for some SSI state supplements. Although we had some guidelines for evaluating disability for these individuals before our new ruling, they were not detailed.

After the Balanced Budget Act of 1997 became law, we knew that there would be more disability claims for individuals age 65 and older. For that reason, we wanted to provide more guidance to our adjudicators, especially for evaluating disability in people who are significantly older than 65. The ruling includes special provisions for individuals age 72 or older and for individuals age 65 and older who are illiterate in English or who cannot communicate in English. The ruling also reminds adjudicators to be alert to and to address allegations of impairments that are commonly associated with the aging process, such as osteoporosis, arthritis, loss of vision and memory loss.

The ruling also reminds SSA adjudicators that some individuals age 65 or older may not understand or be able to comply with our requests to submit evidence or attend a CE. Therefore, adjudicators must make special efforts in situations in which it appears that an individual age 65 or older may not be cooperating before deciding whether a person is not cooperating with us. We will obtain the services of a qualified interpreter if the individual requests or needs one. We can provide an interpreter at a CE if the CE provider is not fluent in the individual's language.

If you would like to read the ruling, you can find it at www.ssa.gov/OP_Home/rulings/ssi/02/SSR99-03-ssi-02.html.

SSI: PRESUMPTIVE DISABILITY/PRESUMPTIVE BLINDNESS PROVISIONS

There is a special provision in the SSI law that allows us to pay up to 6 months of SSI to a person who applies for disability or blindness

payments before we have to decided whether the person is disabled or blind. Under this presumptive disability/presumptive blindness provision, we may make SSI payments before we make our initial finding about disability or blindness if we find that the person is presumptively disabled or presumptively blind, and meets all other eligibility requirements for SSI benefits; e.g.., income and resource criteria. If we ultimately find that the person is not disabled or blind, the person does not have to pay back any presumptive disability or presumptive blindness payments. We cannot make presumptive disability or presumptive blindness payments to people whose cases are at an appeal level in our process.

Every individual filing an initial or subsequent application for SSI disability or blindness benefits, including children, is a potential candidate for presumptive disability or presumptive blindness payments.

We can make a finding of presumptive disability or presumptive blindness if available evidence reflects a "high degree of probability" that the person is disabled or blind. In the case of readily observable impairments, e.g., amputation of extremities or total blindness, we can make a finding of presumptive disability or blindness without medical or other evidence.

In many cases, SSA field offices can make presumptive disability decisions based on observations, reliable medical evidence or confirming third-party contact. But they cannot make these decisions for all kinds of conditions. DDS adjudicators can make presumptive disability determinations in cases involving *any* type of condition.

The Social Security Act does not provide for presumptive payments to individuals applying for SSDI benefits.

NOTICES OF PROPOSED RULEMAKING

Addition of Medical Criteria for Evaluating Down Syndrome in Adults

On October 12, 1999, SSA published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* that proposed to add a new medical listing for Down syndrome in adults (64 FR 55215). We already have a listing for Down syndrome in children, and the proposed listing would make the adult and childhood listings consistent in this regard. We provided the public with a 60-day comment period. In response to the NPRM, we received comments from 20 individuals and organizations. We are currently analyzing these comments.

Even though the comment period has closed, you may view the NPRM at www.ssa.gov/regulations/rin0960_af03.htm.

Technical Revisions to the Medical Listings

On February 11, 2000, we published an NPRM in the *Federal Register* containing a variety of proposed technical revisions to the medical listings for both adults and children. All interested parties have 60 days to provide comments to the agency concerning these proposed revisions. The comment period ends on April 11, 2000.

The proposed technical revisions reflect advances in medical knowledge, treatment and terminology. In certain areas, they clarify existing listing criteria. We are also proposing to remove a few rarely used listings and to add some new listings--for example, for liver and lung transplants.

The proposed revisions are intended to clarify or modify current listing language to improve understanding and usability. However, they are not intended to be a comprehensive update of all the listings.

You may view the NPRM at www.ssa.gov/regulations/rin0960_ae99.htm.

THE FOSTER CARE INDEPENDENCE ACT OF 1999

On December 14, 1999, the President signed into law the Foster Care Independence Act of 1999, Public Law 106-169. The law includes provisions relating to foster care and the Old-Age, Survivors and Disability Insurance (OASDI) and SSI programs and establishes a new title VIII of the Social Security Act

providing special cash benefits to certain World War II veterans. A summary of the major provisions follows:

SSI Eligibility

- Applies to trusts established on or after January 1, 2000.

- For SSI purposes, an individual's countable resources now include the assets of any trust containing property transferred from the individual, or his or her spouse, subject to certain exclusions. Any earnings of or additions to a countable trust will count as the individual's income.

- Trusts established by will or those that would reimburse the state for the cost of medical assistance paid on behalf of the beneficiary are excluded. The provision ensures that SSI beneficiaries who lose their SSI benefits because of assets held in trust will not automatically lose their Medicaid benefits. The Commissioner is authorized to waive application of this provision in cases of undue hardship

- SSI applicants and beneficiaries may be required to authorize Social Security to obtain their financial records from any and all financial institutions. Refusal to provide authorization or revoking such authorization may result in SSI ineligibility.

SSI Overpayments

- A representative payee is now liable for an SSI overpayment caused by a payment made to a beneficiary who has died. SSA must establish an overpayment control record under the representative payee's Social Security number. The law is effective for overpayments made 12 months or more after the date of enactment.

- Social Security must recover SSI overpayments from SSI lump-sum amounts by withholding 50 percent of the lump sum or the amount of the overpayment, whichever is less. This provision is effective 12 months after the date of enactment and applies to overpayment amounts that are outstanding on or after that date

Veterans Benefits

Under the new title VIII of the Social Security Act, qualified veterans may be entitled to special benefits for months beginning October 2000 in which they reside outside the United States on the first day of the month.

- Qualified veterans include World War II veterans who are age 65 or older as of the date of enactment, December 14, 1999, and who are eligible for SSI in December 1999, and in the month they apply for the special benefits; and do not have other benefit income (annuities, pensions, retirement or disability payments) that exceeds 75 percent of the SSI federal benefit rate.

- The special monthly benefit amount payable will be equal to 75 percent of $512.00 (the current SSI federal benefit rate effective in January 2000) less the amount of the veteran's other benefit income for the month. There is no provision for the payment of benefits to dependents or survivors.

For more information about these and other provisions in the new law, contact your local Social Security office or go to www.ssa.gov/legislation/legis_bulletin_121799a.html.

SSI TREATMENT OF GRANTS, SCHOLARSHIPS AND FELLOWSHIPS

Higher education is often the avenue by which persons with disabilities acquire the knowledge and skills to compete successfully in the world of work. Grants, scholarships and fellowships are often the means by which people can pay the high costs of education. But people receiving SSI benefits sometimes wonder what effect student assistance will have on their benefits. Grants, scholarships and fellowships are amounts paid by public and private agencies, organizations and institutions to enable qualified individuals to further their education and training by such things as scholastic or research work. In figuring a person's SSI benefits, any portion of a grant, scholarship or fellowship used for paying tuition, fees or other necessary educational expenses is not counted as income or

resources. But any portion set aside or actually used for food, clothing or shelter is counted.

For SSI recipients who receive student assistance under title IV of the Higher Education Act of 1965 or from the Bureau of Indian Affairs, a broader SSI exclusion applies. By law, we don't count any amount of such assistance, regardless of how it is used.

Examples of title IV programs include:

- Pell grants
- State Student Incentives
- Supplemental Educational Opportunity grants
- Upward Bound
- Academic Achievement Incentive scholarships

Good luck in your studies!

INTERNATIONAL EXCHANGE IS POSSIBLE FOR SSI AND VOCATIONAL REHABILITATION BENEFICIARIES

SSA and Mobility International USA have joined together on a project to ensure that people with disabilities and the professionals who work with them have the support and information they need when an individual's employment preparation plans would benefit from international exchange. Usually, when SSI beneficiaries leave the United States for a whole month, they are not eligible for benefits for that month. The beneficiary may resume benefits after he/she is back in the United States for 30 consecutive days.

But there is a little-known provision in the SSI law that allows some people to keep getting benefits for up to 1 year while they are participating in an overseas educational program. The law says that the educational program must be designed to "substantially enhance the ability of the individual to engage in gainful employment." It must also be sponsored by a school, college or university in the United States and not be available to the person in the United States.

People who are getting SSI benefits and who have the opportunity to participate in an international exchange program, should ask SSA whether they can still get benefits while they are abroad.

OFFICE OF EMPLOYMENT SUPPORT PROGRAMS CO-SPONSORS SYMPOSIUM

On September 22, 1999, the Presidential Task Force on Employment of Adults with Disabilities and the Social Security Administration's Office of Employment Support Programs (OESP) sponsored a one-day symposium on "*Overcoming Barriers to Employment: Implications for Federal Policies and Programs.*" The symposium occurred as Congress was considering and finalizing the TTWWIIA. Signed into law in December, the Act's components, including the extension of health insurance coverage to working individuals with disabilities, initiation of a Ticket to Work program to promote consumer control of employment services, and development of a national network of benefits assistance programs, address many of the issues and barriers identified by participants of the symposium. At the same time, participants recognized that the passage of the law was only the first step in a lengthy and challenging implementation process.

The Symposium, which was held in conjunction with the Annual Project Directors' Meeting of the State Partnership Initiative Research and Demonstration Projects and Systems Change Projects, was funded by SSA, the Department of Education's (DOE) Rehabilitation Services Administration (RSA), and the Presidential Task Force on Employment of Adults with Disabilities. The Symposium brought together representatives of key federally funded demonstration projects from SSA, Department of Labor, DOE, Substance Abuse and Mental Health Services Administration and others to:

(1) identify the major policy, regulatory, fiscal, programmatic and/or attitudinal barriers that limit employment opportunities for the individuals who are served by the projects;
(2) share new, innovative strategies being used by the projects to address those barriers; and

(3) recommend changes to federal policies for consideration by the Task Force.

Participants prepared for the symposium by completing a written questionnaire that described major obstacles and needed policy changes. These responses were synthesized into a preliminary document that categorized identified barriers, innovative strategies and policy recommendations. During the symposium, representatives of the projects convened in work groups to refine barrier and recommendation statements. The work groups focused on:

Consumer-Directed Services
Employer Partnerships
Employment Training and Supports
Social Security
Federal, State and Local Service Coordination
Health Care.

Several recurring themes were evident from the participants' discussions:

- Federal and state bureaucracies continue to serve as gatekeepers and restrict access to services and supports for individuals with disabilities attempting to direct their own careers.

- Social Security disability recipients continue to suffer from inadequate or inaccurate information about work incentives and the impact of employment on their financial and health care status.

- Many work disincentives still exist in the Social Security disability program, such as overly restrictive income and assets limits, the performance of substantial gainful activity (SGA) as a reason for terminating cash benefits for SSDI recipients, and an SGA level that fails to take into account inflation or the need for a living wage.

- Employers are an overlooked resource for increasing employment of individuals with disabilities. Employers need to be informed, included and involved in rehabilitation and systems change efforts through innovative collaboration models.

- Federal employment and rehabilitation efforts have failed to sufficiently promote and support entrepreneurial and self-employment options for individuals with disabilities.

- One-Stop Career Centers supported through the Workforce Improvement Act often fail to accommodate individuals with disabilities.

- Federal and state services for individuals with disabilities are compartmentalized, with fragmented eligibility criteria and conflicting goals. Collaborative and integrated service systems, including joint funding of employment initiatives, should be developed which address individuals' holistic assets and needs.

- Federal employment and long-term support programs continue to fund segregated work or work activity programs at the expense of community-based, integrated employment programs that generate superior outcomes in less restrictive settings.

- Federal leadership is required to continue the spirit of innovation and experiment that has led to advances in assistive technology, supported employment, transition from school to work and other recent initiatives.

The State Partnership Systems Change Project Office at Virginia Commonwealth University compiled and edited the refined barrier and recommendation statements into a comprehensive report of the symposium. A summary of the report may be viewed at www.spiconnect.org.

For more information contact John Kregel at jkregel@saturn.vcu.edu or Natalie Funk, OESP, at natalie.funk@ssa.gov.

IN SEARCH OF...YOUR IDEAS AND MATERIALS

This newsletter is your newsletter. We welcome your articles, letters to the editor, comments, artwork or suggestions for improvement. Many of your past suggestions have been implemented. Please submit the ideas or materials to:

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